

Appendix D

IRREVOCABLE LETTER OF CREDIT

Irrevocable Letter of Credit Number _____

Expiration Date: _____

As set out below

Beneficiary(ies):

(1) (Lead Agency) _____

Address: _____

(2) California Department of Conservation
Office of Mine Reclamation
801 K Street, MS 09-06
Sacramento, California 95814-3529

This will serve as notice and agreement that (Name of Bank), a Financial Institution subject to regulation by the State of (Regulating State), and duly authorized to do business in the State of California, has on deposit the necessary amount of \$ _____ (United States Dollars) pledging and guaranteeing these funds to the (Lead Agency) and/or the Department of Conservation to meet the obligations of (Applicant) to establish and perform a reclamation plan and mitigation measures pursuant to Mining/Reclamation Plan Number _____ approved by (Lead Agency) on (Approval Date).

The \$ _____ will be distributed to the Beneficiary(ies) upon the authorization and direction of a duly authorized representative of the (Lead Agency) or the Department of Conservation, which accompanied by the documents hereafter described and subject to the following conditions:

(1) The (Lead Agency) may draw hereunder by means of its draft(s), accompanied by this original Letter of Credit and the following signed and dated statement, appropriately completed:

The amount of our accompanying draft \$ _____ represents a sum due to the (Lead Agency) pursuant to Public Resources Code Section 2773.1(b). The (Lead Agency) has determined, following a public hearing, that (Applicant) is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, and (Applicant) has been provided with notice and opportunity to cure (which cure period has expired), all in accordance with the provisions of Public Resources Code Section 2773.1(b). The individual signing below certifies that the foregoing statements are true and correct and that the signatory is authorized to sign and deliver this statement on behalf of (Lead Agency), and that a copy of this statement has been forwarded by certified mail or courier service to the Department of Conservation.

(Lead Agency)

By: _____

Name: _____

Title: _____

(2) The Department of Conservation may draw hereunder by means of its draft(s), accompanied by the following signed and dated statement, appropriately completed (the original Letter of Credit need not accompany the draft(s)):

The amount of our accompanying draft \$_____ is due to the Department of Conservation pursuant to Public Resources Code Section 2773.1(b). The Department of Conservation, or the (Lead Agency) has determined, following a public hearing, that (Applicant) is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, and notice and opportunity to cure have been given (with the cure period having expired), all in accordance with Public Resources Code Section 2773.1(b) and (d). The individual signing below certifies that the foregoing statements are true and correct and that the signatory is authorized to sign and deliver this statement on behalf of the Department of Conservation, and that a copy of this statement has been forwarded by certified mail or courier service to the (Lead Agency).

California Department of Conservation

By: _____

Name: _____

Title: _____

This Letter of Credit shall be in full force and effect until receipt of a written statement by a duly authorized representative of the (Lead Agency) or the Department of Conservation that all of the obligations secured hereby have been performed or until disbursement of all funds pledged and guaranteed hereunder pursuant to the preceding paragraphs or until the Expiration Date hereunder.

The Letter of Credit shall expire (Expiration Date) at the counters of (Financial Institution and Address), or any extended date as hereinafter provided. It is a condition of this Letter of Credit that it shall be automatically extended for additional periods, each of one year, unless at least one hundred twenty (120) days prior to the then relevant expiration date (Financial Institution) has advised the (Lead Agency) and the Department of Conservation by registered or certified mail that the (Financial Institution) elects not to extend. In that event, the (Lead Agency) and/or the Department of Conservation may draw hereunder on or prior to the then relevant expiration date, up to the full amount available hereunder, against the sight draft(s) on (Financial Institution), bearing the number of this Letter of Credit.

The amount of this Letter of Credit may be reduced in accordance to conditions set forth in the above referenced Mining/Reclamation Plan Number _____, provided that any such reduction shall be made only with the written approval of a duly authorized representative of the (Lead Agency) and/or the Department of Conservation.

This agreement shall be governed by and construed in accordance with the laws of the State of California. This credit shall be subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication Number 500 notwithstanding Article 19 of said publication. If this Letter of Credit expires during an interruption of business as described in Article 19, (Financial Institution) is hereby specifically authorized and agree to effect payment if the letter is drawn within thirty (30) days after the resumption of business.

This shall constitute an irrevocable commitment of funds which shall not be subject to recall by (Financial Institution) before the Expiration Date hereunder.

(Financial Institution)

By: _____

Name: _____

Title: _____

[SEAL]